



State of Wisconsin

Department of Children and Families

NOTICE OF PUBLIC HEARING

**Regulation of Rates Charged by Residential Care Centers for
Children and Youth, Child-Placing Agencies, and Group Homes**

DCF 52, 54, and 57

NOTICE IS HEREBY GIVEN that pursuant to ss. 48.67 (intro.), (3) (b) and (d), 49.343 (4), and 227.11 (2) (a), Stats., the Department of Children and Families proposes to hold a public hearing to consider emergency rules and proposed permanent rules relating to regulation of rates charged by residential care centers for children and youth, child-placing agencies, and group homes.

Hearing Information

**May 18, 2011
Wednesday
1:30 p.m.**

**MILWAUKEE
Milwaukee State Office Building
819 N. 6th Street, Room 40**

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

If you have special needs or circumstances regarding communication or accessibility at a hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audio format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 48.67 (intro.), (3) (b) and (d), 49.343 (4), and 227.11 (2) (a), Stats.

Statutes interpreted: Sections 48.67, 49.343, and 938.357 (4) (a) and (c) 1. and 2., Stats.

Related statute or rule: Sections 48.60, 48.61, 48.625, 49.34, 101.149, 101.647, 347.48, and 938.34 (4d), Stats.

Explanation of Agency Authority

Section 49.343, Stats., provides that the department shall establish the per client rate that a residential care center for children and youth or a group home may charge for its services, and the per client administrative rate that a child welfare agency may charge for the administrative portion of its foster care services. The department shall determine the levels of foster care under ch. DCF 56 to which rate regulation applies.

Section 49.343 (4), Stats., provides that the department shall promulgate rules to implement s. 49.343, Stats. Those rules shall include rules providing for all of the following:

- Standards for determining whether a proposed rate is appropriate to the level of services to be provided, the qualifications of a provider to provide those services, and the reasonable and necessary costs of providing those services.
- Factors for the department to consider in reviewing a proposed rate.
- Procedures for reviewing proposed rates, including procedures for ordering a rate when negotiations and mediation fail to produce an agreed to rate.

Section 938.357 (4) (a), Stats., provides that if the Department of Corrections (DOC) places a juvenile who is placed with DOC in a Type 2 juvenile correctional facility operated by a child welfare agency, DOC shall reimburse the child welfare agency at the rate established under s. 49.343, Stats. Section 938.357 (4) (c) 1., Stats., provides that if DOC places a juvenile who is placed with DOC in a Type 2 juvenile correctional facility operated by a child welfare agency and it appears that a less restrictive placement would be appropriate for the juvenile, the rate for the less restrictive placement would also be established under s. 49.343, Stats. Section 938.357 (4) (c) 2., Stats., provides that if a juvenile under the supervision of a county department under s. 938.34 (4d), Stats., is placed in a Type 2 residential care center, the rate for the placement is established under s. 49.343, Stats., and if there is a change in placement to a less restrictive placement, the rate for the less restrictive placement would also be established under s. 49.343, Stats.

Section 48.67 (intro.), Stats., provides that the department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of, child welfare agencies, child care centers, foster homes, group homes, shelter care facilities, and county departments. Those rules shall be designed to protect and promote the health, safety, and welfare of the children in the care of all licensees.

Section 48.67 (3) (b), Stats., provides that the department shall promulgate rules that require all staff members of a group home who provide care for the residents of the group home have current proficiency in the use of an automated external defibrillator, as defined in s. 256.15 (1) (cr), Stats., achieved through instruction provided by an individual, organization, or institution of higher education that is approved under s. 46.03 (38), Stats., to provide such instruction.

Section 48.67 (3) (d), Stats., provides that the department shall promulgate rules that require all child welfare agencies that operate a residential care center for children and youth have in each building housing residents of the residential care center for children and youth when those residents are present at least one staff member who has current proficiency in the use of an automated external defibrillator, as defined in s. 256.15 (1) (cr), Stats., achieved through instruction provided by an individual, organization, or institution of higher education that is approved under s. 46.03 (38), Stats., to provide such instruction.

Section 227.11 (2) (a), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency.

Summary of the Rule

This rule-making order affects ch. DCF 52, Residential Care Centers for Children and Youth; ch. DCF 54, Child-Placing Agencies; and ch. DCF 57, Group Foster Care.

Rate Regulation

Under this rule, the department will establish maximum rates that no group home, residential care center, or child-placing agency may exceed and will require that each individual program document that its rate is based on the reasonable and necessary costs of the services provided by that program.

For group homes and residential care centers, the regulated rate is a per client rate that each group home or residential care center may charge for costs associated with room, board, administration, service provision, and oversight of youth in the group home or residential care center. For child-placing agencies, the regulated rate is a per client administrative rate that each child-placing agency may charge for the administrative portion of its services for foster homes with a Level 3 or 4 certification under the foster care levels of care system in Emergency Rule 1050. The administrative rate is the difference between the rate charged by a child-placing agency to a purchaser of services for a foster home with a Level 3 or 4 certification and the rate paid by the child-placing agency to the foster parent for the care and maintenance of a child placed in the foster home.

Rate regulation is being phased in to apply to the per client rates that a residential care center or group home may charge for services provided July 1, 2011, to December 31, 2011, for a child who is first placed in a residential care center or group home or who is placed in a new residential care center or new group home on or after July 1, 2011 and the per client administrative rates that a child-placing agency may charge for services provided July 1, 2011, to December 31, 2011, for services that the agency provides for a Level 3 or 4 foster home in which a child is first placed or a child is newly placed on or after July 1, 2011. This rule will apply to all group home and residential care center per client rates and child-placing agency per client administrative rates effective January 1, 2012.

To assist with determining the reasonable and necessary costs of providing services, the department will require that each group home, residential care center, and child-placing agency

submit a cost and service report and an audit report for services provided in the previous year. For rates effective July 1, 2011, the deadline for submission of this information is April 29. The department will use the information submitted by April 29 to determine both 2011 and 2012 rates. In future years, the deadline for submission of the cost information will be July 1.

The department shall notify licensees of the per client rates that no residential care center or group home may exceed and the per client administrative rate that no child-placing agency may exceed for its services. For rates effective July 1, 2011, the department released the maximum allowable rates on March 1. For rates for services provided in 2012 and future years, the maximum allowable rates will be released no later than September 1 of the preceding year.

Each group home, residential care center, and child-placing agency licensee shall submit to the department a proposed rate for services to be provided for each program that the licensee operates. In reviewing a proposed rate submitted by a licensee, the department shall consider whether the proposed rate exceeds the maximum rate determined by the department, the program's most recent cost and service report, the program's most recent audit report, whether the program's reported costs are within a range of similar costs reported by other programs for similar items and services, the program's rate in previous years, and the factors listed in s. 49.343 (2) (b), Stats. For rates effective July 1, 2011, a licensee's proposed rate shall be submitted no later than April 29. For rates effective January 1, 2012, and future years, a licensee's proposed rate shall be submitted no later than October 1 of the preceding year.

If the department determines that a licensee's proposed rate is appropriate based on the listed factors, the department shall approve the proposed rate. If the department determines that a licensee's proposed rate is not appropriate, the department shall negotiate with a licensee to determine an agreed to rate. The department's approved rate following negotiations shall be based on the listed factors and additional relevant information presented during negotiations. For rates effective July 1, 2011, the department will notify licensees of their approved rate no later than June 1. For future years, the department will notify licensees of their approved rate no later than November 1 of the preceding year. A licensee who does not agree to the department's approved rate may request mediation and a contested case hearing under ch. 227, Stats.

In addition to the rate established under the rate regulation process, a licensee may request that a county pay an extraordinary payment for a specific child in care. A request for a child-specific extraordinary payment may be approved by the county and shall be reviewed by the department. A licensee may request an extraordinary payment for a child who has service needs that are not accounted for in the maximum allowable rate determined by the department and not paid for by another source. The extraordinary payment may not be used to cover expenses that are a disallowable cost under federal regulations and cost circulars. A licensee may not appeal the denial of a request for an extraordinary payment.

The department shall convene the rate regulation advisory committee under s. 49.343 (5), Stats., at regular intervals to consult with the department on items in s. 49.343 (5) (a) to (c), Stats.

Other Changes Affecting Residential Care Centers, Group Homes, and Child-Placing Agencies

Inspections, records, and requests for information. The rules provide that the department may visit and inspect a group home, child-placing agency, or residential care center. During this inspection, a licensee shall provide any documentation of operations requested by the department and any resident records requested by the department. A licensee shall respond promptly to requests for information from the department or any other governmental agency with statutory authority to see the information and shall ensure that information that the licensee or staff submits or shares is current and accurate. For group home and residential care center licensees, this provision also applies to requests and information submitted to or shared with a placing agency.

A group home, residential care center, or child-placing agency licensee shall maintain staff payroll records and retain the records for 5 years. A group home or residential care center licensee shall also maintain and retain written schedules of staff coverage that document the specific staff that worked each shift to meet the applicable staff-to-resident ratios.

A group home shall have written policies and procedures that indicate for each shift of resident care staff how all of the following will be documented:

- Staff arrival and departure times.
- Number and location of residents.
- Summary of each resident's behavior and program participation during the shift.

Financial records and audits. A group home, residential care center, or child-placing agency licensee shall arrange for an annual audit report by a certified public accountant. The licensee shall also establish and maintain an accounting system that accurately identifies income and disbursements for each resident or child by the cost categories that must be reported to the department for determination of rates.

Department memos. A licensee of a group home, residential care center, or child-placing agency shall register to receive department memos on child welfare licensing and child welfare policy by electronic mail.

Non-discrimination. A licensee of a group home, residential care center, or child-placing agency shall ensure that the group home, residential care center, or child-placing agency does not discriminate against a resident or child based on the resident's race or cultural identification, sex, sexual orientation, age, color, creed, ancestry, national origin, disability, political affiliations, or religious beliefs.

Other Changes Affecting Residential Care Centers and Group Homes

- Supervision of residents. Language on supervision of residents has been rewritten to emphasize supervision to ensure the safety and well-being of residents in addition to complying with minimal staff-to-resident ratios.
- Prohibited physical restraint. The rules incorporate the provisions of DSP Memo Series 2009-05 that was jointly issued by the Department of Health Services and the Department of Children and Families. It provides that resident care staff may not use

any type of physical restraint on a resident unless the resident's behavior presents an imminent danger of harm to self or others and physical restraint is necessary to contain the risk and keep the resident and others safe. If physical restraint is necessary, the rules provide certain prohibited practices.

- Disaster plan. Each licensee shall file a disaster plan with the department and placing agency that would allow the department or placing agency to identify, locate, and ensure continuity of services to children under the placement and care responsibility or supervision of the placing agency who are displaced or adversely affected by a disaster. Disaster plans are required by the federal Child and Family Act of 2006.
- Child safety restraint systems. The rules incorporate the requirements of s. 347.48 (4), Stats.
- Carbon monoxide detectors. The rules incorporate the requirements in ss. 101.647 and 101.149, Stats., regarding carbon monoxide detectors. Effective February 1, 2011, s. 101.647, Stats., requires that a one- or two-unit building have a functional carbon monoxide detector installed in the basement and on each floor level, except the attic, garage, or storage area of each unit.
- Training in use of automated external defibrillator. The rules incorporate the requirements of s. 48.67 (3) (b) and (d), Stats.

Summary of Factual Data and Analytical Methodologies

The department developed this rule in conjunction with an advisory committee consisting of representatives of purchasers, county departments, the Bureau of Milwaukee Child Welfare, tribes, providers, consumers, and the Wisconsin Association of Family and Children's Agencies.

From fall 2009 to fall 2010, the department and the advisory committee were developing a policy to implement rate regulation effective January 1, 2011, with levels of care for group homes, residential care centers, and child-placing agencies that provide services for foster homes with a Level 3 to 5 certification. Each level of care would have an established rate and specific requirements regarding provision of care. In fall 2010, the department determined that we did not have sufficient information to implement that type of system. Implementation of rate regulation was delayed until July 1, 2011, and a simpler approach to rate regulation was developed without levels of care for providers.

Summary of Related Federal Requirements

- 48 CFR Part 31 provides contract cost principles and procedures under the federal acquisition regulation. Allowability of costs incurred by commercial organizations is determined in accordance with this provision.
- Allowability of costs incurred by nonprofit organizations is determined in accordance with OMB Circular A-122, *Cost Principles for Nonprofit Organizations*.
- Allowability of costs incurred by state, local, or federally-recognized tribal governments is determined in accordance with OMB Circular No. A-87, *Cost Principles for State and Local Governments*.
- 45 CFR Part 74 provides uniform administrative requirements for awards and subawards from the federal Department of Health and Human Services to institutions

of higher education, hospitals, other nonprofit organizations, and commercial organizations.

- 45 CFR Part 92 provides uniform administrative requirements for grants and cooperative agreements from the federal Department of Health and Human Services to state, local, and tribal governments.

The Legislative Audit Bureau has confirmed that the department is responsible for monitoring compliance with federal regulations and cost circulars by anyone to whom the department passes federal funds.

Comparison to Adjacent States

Illinois. Illinois has a levels of care system group homes and residential care centers. Most residential care is subject to a hybrid rate-setting system. The rules provide that the state reimburses providers through payment made according to standard reimbursement levels that are negotiated through contract. For performance residential programs, the state sets staffing ratios and agrees upon salaries for various types of employees with the provider. Food and laundry, building, and administrative costs are based on median historical costs and are capped. This calculation of reimbursable costs provides the provider with an amount of money that the provider has discretion to use.

Iowa. Iowa has established a weighted average rate for services providers offer. The weighted average rate was established in 1997. In 1998, existing providers had a one-time opportunity to negotiate their rates. The rates may only be changed if there is an across-the-board increase or decrease in rates. The Department of Human Services negotiates rates with a new provider or an existing provider adding an new service.

Minnesota. Rates for residential facilities are set by a negotiation process between the facility and the county where the facility is located. Once a rate is negotiated, the facility and the county enter into a contract and the facility send the contract paperwork to the state. Facilities are also required to submit cost information each year. When the reimbursement rate is calculated, the facilities are allocated a percentage of the rate for room and board, and a percentage of the rate for administration.

Michigan. Counties negotiate contracts with providers and the state approves the contracts.

Effect on Small Business

The rule will affect small businesses, but will not have a significant economic effect on a substantial number of small businesses. The Department's Small Business Regulatory Coordinator is Elaine Pridgen, elaine.pridgen@wisconsin.gov; (608) 267-9403.

Analysis Used to Determine Effect on Small Businesses

The rule provides procedures to implement rate regulation that is directed by s. 49.343, Stats.

Agency Contact Person

Ron Hermes, Director, Bureau of Permanence and Out-of-Home Care, Division of Safety and Permanence, (608) 267-3832, ron.hermes@wisconsin.gov.

Place Where Comments are to be Submitted and Deadline for Submission

A copy of the proposed rules is available at <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule or fiscal estimate by contacting:

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Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> website no later than May 19, 2011, will be given the same consideration as testimony presented at the hearing.

Eloise Anderson April 13, 2011
Secretary or designee